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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 26 of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)
Inquiry Into Sports Programming)
Migration)

PP Docket No. 93-21

To: The Commission

COMMENTS OF ESPN, INC.

1. ESPN, Inc. ("ESPN") respectfully submits these comments in connection with the Further Notice of Inquiry ("Further Notice") in the above-referenced proceeding. These comments supplement ESPN's submission of March 29, 1993 in response to the Commissions initial Notice of Inquiry in this matter.

2. To assist the Commission in its analysis, the Further Notice seeks information concerning certain professional sports league contracts which ESPN has for game telecasts. In response, ESPN offers the following:

a. In December, 1993 ESPN and the National Football League entered into a new four year agreement for the continued distribution by ESPN of NFL games. The telecast

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rights acquired by ESPN are virtually identical to the rights ESPN has held since 1987. ESPN will telecast nine regular season Sunday (and occasional Thursday) night games and three preseason games each season. Each ESPN telecast will be on an exclusive, national basis but ESPN continues to have the obligation to make our telecasts available to an over-the-air station in the cities of the participating teams. The only significant change to the new agreement is the fact that the NFL Pro Bowl, which has been a part of the ESPN telecast package since 1987, will move to broadcast network distribution on ABC beginning next season. Our package will therefore have one less game than in prior years with a feature event, the NFL Pro Bowl, moving from cable to broadcast television.

b) In September 1993, ESPN and Major League Baseball reached agreement on an extension of ESPN's contract for the continued distribution of MLB regular season games. The new contract calls for ESPN to distribute approximately 77 regular MLB games in each of the 1994 through 1999 seasons. ESPN has no rights to any post-season games. The games will include Sunday evening single games, Wednesday night doubleheaders and doubleheaders on opening day, Memorial Day, Independence Day and Labor Day. The exclusivity provisions in the new agreement for each of these telecast dates is the same as in the prior agreement. The Sunday Night games are exclusive by virtue of the fact that except for the ESPN

games and occasional back-up games, no other MLB games are scheduled for Sunday evenings. On Wednesday nights no competing local, over-the-air telecast or superstation telecasts are permitted. Local and region cable coverage is permitted on Wednesday nights. There are no restrictions on local, regional or superstation coverage on opening day or on the holidays. As in the prior deal, for all days other than Sunday, ESPN generally blacks out the home markets of the clubs participating in its telecasts if necessary to protect the gate or the local telecaster of those games. As noted in our earlier comments in this proceeding, ESPN's coverage of MLB has not been the cause of any diminution of local, over-the-air telecast coverage of baseball and nothing in our new agreement will change that course. To the contrary, in large measure due to the enormous amount of television coverage of MLB games by other distributors (especially superstations), ESPN has cut its own coverage of MLB to approximately one-half the number of games distributed under our prior agreement. As a result, there will be substantially fewer nationally distributed cable games and less direct competition for the baseball-viewer's attention on those nights (Mondays, Tuesdays and Fridays) on which ESPN used to televise MLB games. This change might increase the baseball ratings of local telecasters on those days, while the impact from ESPN's Wednesday telecasts remains unchanged from the past four years.

c) ESPN is in the second year of a five-year agreement as the exclusive national telecaster of National Hockey League games. Under the agreement we carry an NHL regular season game of the week on ESPN and three games per week on ESPN2. We provide almost complete coverage of all NHL playoff games. While ESPN has national exclusivity for each game we televise, we are always required to black out the home market of the participating teams in each game. Accordingly, local telecasters of NHL games are always protected against ESPN's coverage of the local team. ESPN has and continues to work with the National Hockey League to provide national broadcast exposure for NHL games. During last season, ESPN purchased time on the ABC Television Network to distribute five Stanley Cup playoff games. This year, ESPN has again purchased time on ABC to distribute three regular season games and three Stanley Cup playoff games nationally. We will continue with this effort to provide the National Hockey League with national network exposure for games which otherwise would only appear locally or, in the case of playoffs, have been on ESPN or ESPN2.

COLLEGE FOOTBALL

3. ESPN continues to cover college football games under contracts with the College Football Association and the Big-10 and Pac-10 Conferences (the latter as a sub-license from Prime Ticket), plus agreements for the NCAA Division II

and III playoffs and with various post-season bowl and all-star games, under the same general terms and conditions noted in our previous comments.

4. When various conferences and independent schools decided recently not to continue in the CFA beyond the 1995 football season, ESPN entered into agreements with former CFA members the Atlantic Coast Conference and the Big East Conference for telecast rights effective as of the 1996 season. These agreements provide for coverage of up to 10 and 12 games, respectively, and specifically contemplate coverage of games on ESPN2. ESPN is in negotiation with other former CFA conferences and will negotiate with the Big-10 and Pac-10 and various independent schools regarding potential agreements for 1996 and beyond.

5. ESPN's college football agreement grant ESPN exclusive live telecasting rights to the actual games covered. Games not telecast by ESPN, however, are available for local telecast, subject only to exclusivity provisions as to particular time periods and our CFA deal even permits schools to televise locally games not selected by ESPN during ESPN's telecast window. The procedures for selecting games for telecast vary among all our agreements. Generally, however, ESPN selects its specially-scheduled Thursday night games at least seven months before the season starts and most of its

early-season games during the summer. We then can choose the remainder of our schedule during the season on no less than 12, or in very few cases six, days notice, to factor teams' in-season performance into the determination of which games are covered.

6. With the break-up of the CFA, the scope and pattern of college football coverage in 1996 and beyond is unclear, but it seems likely that the volume of games televised will continue to increase. Indeed, ESPN now is aware of agreements already in place and taking effect in 1996 for college football to appear on ABC, CBS, NBC, ESPN, ESPN2 and Prime Network, and ESPN fully expects additional agreements to be in place by 1996 for college football coverage by various regional cable networks, local over-air stations, regional syndication and single-market arrangements. If history is a guide, the sale of television rights at the conference level will result in the continued wide-spread distribution of college football telecasts by multiple national, regional and local outlets. College basketball, where most deals are made at the conference level, has followed this pattern and the Commission has noted with approval as regards this proceeding the telecasting patterns in that sport.

7. Finally, in response to the Commission's invitation in Paragraph 31 of the Further Notice to address various

antitrust issues with respect to college football, ESPN respectfully directs the Commission's attention to Section III of the comments filed in this proceeding by Capital Cities/ABC, Inc. ESPN fully supports the analysis set forth therein.

CONCLUSION

8. As is clear from the facts collected by the Commission in this proceeding, the sale of telecasting rights to sports events is subject to an ever changing set of circumstances at the national, regional and local levels. These circumstances define at any given moment who are the sellers, who are the buyers, what rights are for sale, what they are worth and the myriad terms and conditions which become part of the distribution arrangements. It is clear however that the system has produced more and better sports television viewing options than ever before. That system should not be disturbed by regulation or legislation which cannot possibly predict the future and which is not warranted given the growing choices available today.

Respectfully submitted,

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